IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Appeal No. 82/2002

Date of decision: 16.10.2004

For the approval of:-

Hon'ble Mr. Justice J. C. S. Rawat

- Whether the order/judgment should be sent to the reporters for reporting? Yes

- Whether the reporters be allowed to see the judgment? Yes

Dated:- 16.10.2004
LSR

HIGH COURT OF UTTARANCHAL

AT NAINITAL

Criminal Jail Appeal No. 82/2002

Ram Singh
S/o Late Sri Umed Singh
R/o Village Kankhola
P.S. Bhagoti
Teh.Ranikhet
Distt. Almora .....Appellant

Versus

State of Uttaranchal .....Respondent

Sri Sanjeev Kumar Shah, Amicus Curiae for the appellant
Sri Lalit Verma, learned A.G.A. for the State.

Hon'ble J. C. S. Rawat, J.

Dated :- October 16, 2004

1. This criminal appeal has been preferred by the appellant Ram Singh against the judgment and order dated 20.3.2002 passed by Shri V.K.Jain, the then Session Judge Almora in Session Trial No.51 of 2000 convicting and sentencing the appellant for the offence under section 304-B IPC for 7 years R.I. and under section 498-A IPC for a period of 3 years R.I. Both the sentences were ordered to run concurrently.

2. Brief facts, which rise to this appeal are that a report was lodged by Shri Balwant Singh, the uncle of the deceased Smt.Radha Devi, with the Nayab Tehsildar on 31.1.2000 alleging that the marriage of his

niece Radha Devi was solemnized with the appellant Ram Singh in village Kankhola about 2 years back. Soon after the marriage the appellant and her mother-in-law Smt. Bhagwati Devi had been torturing her with cruelty in connection with the dowry and he was demanding an amount of Rs.50,000/- and T.V. etc. She had been telling this fact to her grand mother Smt. Jasoli Devi (P.W.2) to her. On 29.1.2000 the appellant alongwith some residents of village Kankhola came on a jeep at about 9:30 P.M. and they informed Balwant Singh (P.W.4) that the appellant and the deceased were quarreling there. The appellant also accompanied them but he remained in the jeep. They asked him to accompany with them. He accompanied with the appellant and other persons to the house of deceased Radha Devi. He did not find his niece there. In the next morning it was found that the deceased was dead under a mango tree nearby her house and body was covered with a blue colour cloth. The matter was reported immediately to the Kanongo. The inquest report of the body was prepared and the dead body was sealed. The usual investigation was made and ultimately the charge sheet was submitted against the appellant and Smt. Bhagwati Devi mother-in-law of the deceased.

3. The charge was framed against the appellant under Section 498-A and section 304-B. The learned Session Judge has already acquitted the other accused Smt.Bhagwati Devi.

4. In order to prove its case, the prosecution examined five witnesses P.W.1 Km.Mamta is sister of the deceased who was residing at the relevant time at her sister's house. She is the eyewitness of the incident. P.W.2 Smt.Jasholi Devi the grand mother of the deceased, stated the fact that the appellant was demanding an amount of Rs.50,000/-,T.V. etc. from the deceased and the deceased complained to her grand mother that she is being subjected to cruelty for non fulfillment of the demand of dowry. P.W.3 is Dr.Y.C.Sharma who had conducted the autopsy on the body of the deceased Smt.Radha Devi on 31.1.2000 at about 12:10 p.m. P.W.4 is Balwant Singh who has reported the matter to the revenue Police and he is the witness of the inquest and is the uncle of the deceased. P.W.5. Shri Hemant Kumar Verma Nayab Tahsildar is the Investigating Officer.

5. The appellant in his statement under section 313 Cr.P.C. denied the prosecution case and stated that he has been falsely implicated in this case.

6. The learned Session Judge on consideration of the entire evidence on record found the appellant guilty u/s 304-B IPC and 498-A IPC and convicted and sentenced the appellant as above.

7. I have heard the learned counsel for the parties and perused the record.

8. It is not disputed that the death of the deceased was homicidal death. The appellant himself has stated in his statement under section 313 Cr.P.C. that the

dead body of the deceased was hanging on the mango tree. P.W.4 Dr. Y.C.Sharma who conducted the postmortem on the dead body of the deceased has opined that the death was caused due to asphyxia and further opined that the death would have been caused one and a half day ago. The postmortem was conducted on 31.1.2000.

9. Now I have to determine as to who is responsible for causing the injuries on the person of the deceased. It is a well-settled principle of law that in order to convict an accused for an offence U/s 304-B of IPC, the following essentials must be satisfied-

(a) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances.

(b) Such death must have occurred with in seven years of her marriage.

(c) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband.

(d) Such cruelty or harassment must be for, or, in connection with demand of dowry.

10. It is not disputed that the two ingredients mentioned above are satisfied. However the learned Amicus Curiae vehemently argued that there was absolutely no evidence on record to suggest that the death of Smt. Radha Devi was subjected to cruelty or harassment by the appellant soon before her death and that such cruelty or harassment was for or

in connection with the demand of dowry. Now I will focus my attention in particular to the last three ingredients as indicated above.

11. Thus there may be occasions related to dowry. One is before the marriage, the second is at the time of marriage and third is at any time after the marriage. The third occasion may appear to be for unending period. But the crucial words are in connection with the marriage of the parties. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many of the instances for payment of money or giving property as between the spouses. If customary payment in connection with the birth of child or other circumstances are prevalent in societies such payments are not enveloped within the ambit of dowry. To attract the provisions of section 304B IPC the property or valuable security should be given or agreed to be given in connection with the marriage. The phrase 'soon before her death' emphasized U/s 304 B, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few days weeks or even a few before it. But the proximatory of her death is pivot indicated by that expression. In other words there should be a perceptible nexus between her death and dowry related to harassment or cruelty inflicted on her. If the interval lapsed between the infliction

of such harassment or cruelty and her death is wide, the court would be in a position to gange that in all probabilities it would not have been immediate cause of her death. The court has to decide on the facts and circumstances of each case whether the interval in a particular case was sufficient to stuff its cord from the concept soon before her death.

13. Now coming to the evidence of the parties, PW2 Smt. Jasoli Devi grandmother of the deceased has stated in her evidence that Ram Singh appellant had been demanding Rs. 50,000 in cash, Colour TV etc. since his marriage. She has further stated that the appellant used to make this demand to the deceased so that she asked their parents to fulfill his demand when she came to her parental house. The deceased Radha Devi had been complaining the demand of dowry to her mother since long. PW3 has further stated in her evidence that :

"jk/kk nsoh us ?kj vkdj crk;k fd esjs ?kj esa jkt >xMk gkrk Fkk] dgrh Fkh ngt ykvks blh ij >xMk gkrk FkkA ?kVuk okyh jkr esjk yMdk cyoUr vfHk;qDr ds ?kj x;k FkkA"

14. The defence has cross-examined the witness at length but nothing could be elicited from her cross-examination and the evidence of PW3 is credible and trustworthy on the point that the deceased was subjected to cruelty or harassment soon before her death in connection with the demand

of dowry. No serious challenge had been made during the cross-examination on this point. It was submitted by learned Amicus Curiae that the appellant had never sent any letter demanding the dowry to the parents of the deceased. Hence the evidence of the PW3 is unreliable and untrustworthy. The contention was refuted by the learned A.G.A. It is also in the evidence of the prosecution that both the parties are residents of near by locality. The distance in between the house of both the parties is about 2/1/2 kms. The appellant had been demanding dowry money and colour TV etc. from the deceased so that she may ask to their parents to fulfill the demand of the appellant. There was no occasion to send any letter for the same. It is also in the evidence that the appellant is employed in Army and he used to come after six months for a short period in the village and during that period he used to quarrel with the deceased. PW1 Km. Mamta aged about 12 years is a star witness of this incident. She has stated in her evidence that she was living with the deceased on the day i.e. on 29.01.2000. She has stated that her sister deceased and the appellant were quarreling with each other and the appellant was beating the deceased by kicks and fist. When the deceased cried from her room then she entered into the room of the appellant and her sister deceased and found that her sister was lying on the ground and she was not able to speak. The mother-in-law of the deceased brought some water but she was not able to take it. Her sister was unconscious.

Immediately thereafter the appellant went to the village of Radha Devi and he brought her uncle Balwant Singh (PW4). At that time her sister was not in the house. On the next day her sister was found dead beneath the mango tree. The statements of PW1 Km. Mamta and PW2 Smt. Jasoli Devi clearly reveal that the deceased was subjected to cruelty soon before her death in connection with the dowry. The statement made by the deceased to her grandmother PW2 is admissible in evidence. It is also admitted that the marriage in between the deceased and the appellant was solemnized two years ago from the date of incident.

15. The prosecution adduced the evidence of the PW4 Balwant Singh who is the uncle of the deceased. He has stated in his evidence that at about 9.30 a.m. some persons came from in-laws house of the deceased intimating him that her niece Radha Devi and her husband were quarrelling each other and he was asked to go there. It was further stated that the appellant was also with them. He remained sitting in the jeep. Immediately thereafter PW4 Balwant Singh went to the village in the same jeep. After reaching the house of the appellant Balwant Singh inquired about her niece. The appellant did not tell anything about her and she was not found injured. In the night he remained with the appellant and in the morning he found that Radha Devi was lying on the ground beneath the mango tree and the body was covered with a blue cloth. Immediately

thereafter he went to the village and narrated the matter to the Pradhan of the village and he went to the Patwari Patti and the Patwari came at the spot. He started to prepare the inquest report and other formalities with regard to the body.

16. It was submitted by the learned Amicus Curiae that the deceased had not complained with regard to the dowry as demanded by the appellant to her uncle PW4 Balwant Singh. As such the evidence of PW4 Balwant Singh is not trustworthy to the effect that the appellant demanded dowry from Radha Devi and Radha Devi narrated this fact to her grandmother PW2. It is natural that PW2 Smt. Jasoli Devi is the eldest lady in the house and she will naturally tell her grievances to her mother or to grandmother. It has come in evidence that the deceased had no mother. It is natural phenomena that a lady particularly residing in the village never tells her grievance to the male members of the family and always tell to the ladies of the house. Thus the contention of the learned counsel for the appellant is not tenable.

17. The prosecution evidence further stand corroborated by the medical evidence. Dr. Y.C. Sharma PW3 found the following ante-mortem injuries on the person of the deceased:-

1. Abrasion 2 cm x 2.5 cm on left elbow.
2. Multiple abrasions in the area of 3 cm x 4cm on right leg.

3. Abrasi0n 3 cm x 4.5 cm on upper portion of Left leg.
4. Contusion 2 cm x 2.5 cm over inner side of left leg.
5. Contusion 2 cm x 1 cm on the left side of neck. Colour brown.
6. Contusion over right side of neck just below jaw, 1 cm x 0.5 cm.
7. Contusion 5 cm x 0.5 cm on upper portion of neck.
8. Contusion on the right cheek.

18. The doctor has opined that the cause of death was asphyxia. The duration of the death was one and a half day from the date of post-mortem. This fact further corroborates the evidence of prosecution. Dr. Y.C. Sharma during the cross-examination has stated that the injuries on the person of the deceased were caused by kicks and fists. He has further found that there was no sign of ligature on the neck. He has also opined that the strangulation might have been caused by hand instead of cord. The evidence of the prosecution is credible and trustworthy and the prosecution has proved that the death of the deceased was caused by bodily injures and had occurred otherwise than under normal circumstances, within seven years of the marriage. Her husband appellant subjected the deceased to cruelty soon before her death in connection with the demand of dowry.

19. When the above-mentioned circumstances are established a presumption of dowry death shall be

drawn against the appellant U/s 113 B of the Indian Evidence Act. It is to be kept in mind that presumption U/s 113 B is a presumption of Law. It is well settled that the death of Radha Devi occurred within two years from the marriage other than normal circumstances and the prosecution has proved by cogent evidence. It is not disputed that the death of Radha Devi was unnatural. The appellant has not given any satisfactory account as to how Radha Devi died. There is a presumption U/s 113B of the Evidence Act that the unnatural death has been caused by the husband of the deceased. The appellant has not been able to rebut the presumption. It is also proved that Radha Devi was treated with cruelty on account of dowry.

20. The appellant was examined U/s 313 Cr.P.C. in which he had stated that on 29.01.2000 he called Balwant Singh PW4, uncle of Radha Devi deceased. He had stated U/s 313 Cr.P.C. that he went to the side of Jungle and found the dead body hanging with a 'Saree' beneath the mango tree. The statement further reveals that the defence tried to show that the lady committed suicide by hanging on the tree. This story was not suggested to any of the witnesses during the trial. The medical evidence further reveals that the death was not caused due to hanging and the death was caused due to strangulation by hand. This clearly proves that the appellant strangulated Radha Devi.

21. A question arises as to whether a case U/s 498 A IPC is made out against the appellant or not. The

appellant has been found guilty U/s 304 B IPC. Both the sections are independent. It is to be noted that sections 304 B and 498 A IPC can not be held to be mutually inclusive. These two provisions dealt with distinct offences. It is true that cruelty is an essential to both these sections and that has to be proved.

22. In view of the above discussion I am convinced that the learned Sessions Judge has rightly convicted the appellant under section 304 B and 498 A IPC and no interference need to be required by this court. The appeal has no merits. The appeal must be dismissed and it is dismissed.

23. Let a copy of this judgment alongwith the record of the case be immediately sent back to the court concerned for needful compliance under intimation to this court within two months positively.

(J.C.S.RAWAT J)

October 16, 2004